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An Analysis of Pope Francis' 2015 Reform of the General Legislation Governing Causes of Nullity of Marriage

On the Solemnity of the Assumption of the Blessed Virgin Mary in the year 2015, His Holiness Pope Francis issued two apostolic letters given *motu proprio* by which he reformed the legislation of the Latin and Eastern Churches governing the judicial process for treating causes of nullity of marriage. The issuance of these two documents, which had been expected within some proximity to the celebration of the fourteenth ordinary assembly of the synod of bishops, was announced on September 7, 2015, and the texts were revealed the next day, the Feast of the Nativity of the same Blessed Virgin. That pertaining to the Latin Church bears the *incipit* "*Mitis iudex Dominus Iesus*,"¹ the Lord Jesus, meek judge, and that pertaining to the Eastern Churches "*Mitis et misericors Iesus*,"² the meek and merciful Jesus.

This exercise of supreme legislative authority in the Church is of monumental significance, both because it reforms an institute that has for centuries been the object of the legislative attention of the Roman Pontiff and, most especially, because it touches upon a matter that is fundamental to every society, including the ecclesial society: the dignity, stability

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1. Francis, *motu proprio Mitis iudex Dominus Iesus*, August 15, 2015 (Vatican City: Libreria Editrice Vaticana, 2015).

2. Francis, *motu proprio Mitis et misericors Iesus*, August 15, 2015 (Vatican City: Libreria Editrice Vaticana, 2015).

and sanctity of marriage and the family. Indeed, it dictates the manner of administering justice in the tribunals of the Church in causes of nullity of marriage, which constitute the vast majority, if not the totality of causes handled in those tribunals. While the individual norms are most worthy of detailed analysis, including the manner of their correct application, it is of primary importance for the Church, and especially those engaged in the canonical science and judicial praxis, to reflect upon how these norms were prepared and what principles influence them.

Accordingly, in this study, some observations are made about the process of reform that resulted in the two *motu proprios*. Then, there is an effort to highlight some of the principles or themes that seemed to guide their redaction. These principles include some that are common to canonical legislators preceding Pope Francis and some that are somewhat unique to him. Finally, some critical remarks are offered about the reform, in an effort both to promote among ministers of justice the most just application of the norms as possible and to foster continued discussion about the institute of the marriage nullity process in view of an eventual future reform of these norms, should Pope Francis or one of his successors entertain this possibility. In carrying out these analyses, reference will usually be made to the norms governing the Latin Church, considering that they are substantially and for the most part textually the same as those governing the Eastern Churches.

I. Observations about the Work of the Reform

The matrimonial nullity process in its modern form has been prepared with great care, gradual development, and much consultation and debate. For example, the canons that would be promulgated under Title XX of Book IV of the 1917 Code, *De causis matrimonialibus*, were based on a *votum* presented in 1908 and several *schemata* examined between the years 1909 and 1917, with general consultations of the College of Cardinals, bishops and religious superiors.³ The later revision of these canons occurred

3. Cf. Joaquín Llobell, Enrique De León and Jesús Navarrete, *Il libro "De processibus" nella codificazione del 1917. Studi e documenti. Vol. I: Cenni storici sulla codificazione "De iudiciis in genere," il processo contenzioso ordinario e sommario, il processo di nullità del matrimonio*, Monografie Giuridiche 15 (Milan: Giuffrè Editore, 1999) 193–228.

within a longer period of time, in the context of the whole revision of the *De processibus*. There was a lengthy period of study, drafting and consultation from 1968–1976, and the canons that would comprise Chapter I of Title I of Part III of Book VII of the Code of Canon Law, *De causis ad matrimonii nullitatem declarandam*, were given particular attention in 1978 and 1979. And some of its norms were under consideration even until 1983, the year of their promulgation.⁴ The labors resulting in the publication of the instruction *Dignitas connubii* to be observed in treating causes of nullity of marriage in diocesan and interdiocesan tribunals was initiated by John Paul II on February 24, 1996⁵ and was finally approved and published in 2005.⁶

The revision work resulting in the promulgation of the two *motu proprios*, however, had a very different character. In the first place it was done most quickly. On August 27, 2014, Pope Francis established a pontifical commission for the reform of the marriage nullity process, chaired by the Dean of the Roman Rota, Msgr. Pio Vito Pinto.⁷ It is notable that the

4. For a brief account of this history, see Pio Vito Pinto, *I processi nel Codice di diritto canonico: Commento sistematico al Lib. VII* (Vatican City: Pontificia Università Urbaniana, Libreria Editrice Vaticana, 1993) 11–12, note 11. In broader strokes, see Francesco D'Ostilio, *La storia del nuovo Codice di diritto canonico. Revisione—Promulgazione—Presentazione*, Studi Giuridici 6 (Vatican City: Libreria Editrice Vaticana, 1983).

5. Cf. Frans Daneels, “Una introducción general a la Instrucción *Dignitas connubii*,” in *Procesos de nulidad matrimonial. La Instrucción “Dignitas connubii.” Actas del XXIV Curso de Actualización en Derecho Canónico de la Facultad de Derecho Canónico* (Pamplona, 24–26 octubre de 2005), ed. Rafael Rodríguez-Ocaña and Joaquín Sedano (Pamplona: EUNSA, 2006) 22, no. 2.

6. Pontifical Council for Legislative Texts, instruction *Dignitas connubii*, January 25, 2005 (Vatican City: Libreria Editrice Vaticana, 2005), hereafter cited as DC. The preamble describes the Pope's constitution of an interdicasterial commission in 1996, the cooperative effort in preparing the drafts, the consultation of conferences of bishops, the interim examination of the Pope, additional consultations within the Roman Curia, and the redaction of the final draft by the Pontifical Council for Legislative Texts in accord with the pontifical mandate of February 4, 2003 (*ibid.* 14–15). Cf. Frans Daneels, “Storia della redazione della *Dignitas connubii*,” *Periodica* 104 (2015) 171–208.

7. “Istituita dal Pontefice una commissione speciale di studio per la riforma del processo matrimoniale canonico,” *L'Osservatore Romano. Daily Italian edition* 154/215 (September 21, 2014) 1: “Il 27 agosto 2014, Papa Francesco ha deciso l'istituzione di una commissione speciale di studio per la riforma del processo matrimoniale canonico. Lo ha reso noto sabato 20 settembre un comunicato della Sala stampa della Santa Sede, nel quale si specifica che la commissione sarà presieduta da sua eccellenza monsignor Pio Vito Pinto, decano del tribunale della Rota romana, e sarà composta dai seguenti membri: il cardinale Francesco Coccopalmerio, presidente del Pontificio Consiglio per i testi legislativi; l'arcivescovo Luis Francisco Ladaria Ferrer, gesuita, segretario della Congregazione per la dottrina della fede; il vescovo Dimitrios Salachas, esarca apostolico per i cattolici greci di rito bizantino; i monsignori Maurice Monier,

commission, which was to begin its work immediately (“*quanto prima*”), was not entrusted with examining whether such a reform might be necessary. The need for reform was presupposed by the pontifical mandate. Indeed, the commission’s charge, as described in the just quoted communiqué from the Holy See, was “to prepare a proposal to reform the matrimonial process, seeking to simplify the procedure, rendering it more agile and safeguarding the principle of the indissolubility of marriage.” The preamble to *Mitis iudex Dominus Iesus* described the commission as “working quickly” (“*Alacriter operans*”) after it had prepared some schema after a brief time (“*brevi tempore*”). Indeed, the reform of the process was completed in less than one year, when the Pope affixed his signature on August 15, 2015. Given the fact that the norms, *inter alia*, abolish an institute that has characterized the matrimonial nullity process for 274 years and create a new process under the personal responsibility of the diocesan or eparchial bishop, one might have expected a more gradual, more thoroughly investigative approach to such a reform. A task to be accomplished in such a short period would ordinarily be one that is both urgent and of a relatively simple character; but legislative history has long held the norms governing causes of nullity of marriage to be marked with gravity and just complexity.

In addition, this revision was carried out with relatively limited, if any, direct consultation. It is true that this matter was proposed to the Church at large in preparation for the third extraordinary general assembly of the synod of bishops on pastoral challenges to the family in the context of evangelization held in Rome on October 5–19, 2014. Conferences of bishops were invited to solicit responses to numerous questions facing the current state of marriage and the family, among which were the following: “Could a simplification of canonical practice in recognizing a declaration

Leo Xavier Michael Arokiaaraj e Alejandro W. Bunge, prelati uditori del tribunale della Rota romana; padre Nikolaus Schöch, francescano, promotore di giustizia sostituto del Supremo tribunale della Segnatura apostolica; padre Konštanc Miroslav Adam, domenicano, rettore della Pontificia università San Tommaso d’Aquino (Angelicum); padre Jorge Horta Espinoza, francescano, decano della Facoltà di diritto canonico della Pontificia università Antonianum; e il professor Paolo Moneta, già docente di diritto canonico presso l’università di Pisa. I lavori della commissione speciale nominata dal Papa inizieranno quanto prima e avranno come scopo di preparare una proposta di riforma del processo matrimoniale, cercando di semplificarne la procedura, rendendola più snella e salvaguardando il principio di indissolubilità del matrimonio.”

of nullity of the marriage bond provide a positive contribution to solving the problems of the persons involved? If yes, what form would it take?"⁸ And a number of the revisions implemented do correspond with what was included in the *Instrumentum laboris* for the extraordinary assembly.⁹

Still, it was never clear what relationship (if any) existed between the deliberations of the synod and the work of the commission. Were the responses and discussions of the synod intended to influence or direct the reform? This seems unlikely, since 1) the commission was named about one and a half months prior to the first congregation of the synod, 2) the synod fathers themselves were divided about the need for a reform,¹⁰ and 3) notwithstanding what was just said, the reform was issued prior to there being any deliberations about the reform by the fourteenth ordinary general assembly of the synod of bishops on the vocation and mission of the family in the Church and in the contemporary world (to be held in Rome on October 4–25, 2015), leaving the latter no opportunity to resolve disputed points and even itself to examine the reform proposed

8. Synod of Bishops—III Extraordinary General Assembly, *Pastoral Challenges to the Family in the Context of Evangelization—Preparatory Document* (Vatican City: 2013) at II.4.F.

9. In particular, we read in no. 100: "On the subject of simplifying the canonical process, many responses make the following requests: a simpler and faster canonical process; the granting of more authority to the local bishop; a greater number of laity as judges; and the reduction of financial fees attached to the process. In particular, some question whether two confirming sentences are necessary, at least when no appeal is made, and, in some cases, to leave the obligation to make an appeal to the discretion of the defender of the bond. Others also propose decentralizing the third instance. Responses from the world over call for a more pastoral approach in ecclesiastical courts which gives greater attention to the spiritual needs of the persons involved" (Synod of Bishops—III Extraordinary General Assembly, *Pastoral Challenges to the Family in the Context of Evangelization—"Instrumentum laboris"* (Vatican City: 2014)).

10. We read in no. 48 of the *Relatio Synodi*: "A great number of synod fathers emphasized the need to make the procedure in cases of nullity more accessible and less time-consuming, and, if possible, at no expense. They proposed, among others, the dispensation of the requirement of second instance for confirming sentences; the possibility of establishing an administrative means under the jurisdiction of the diocesan bishop; and a simple process to be used in cases where nullity is clearly evident. *Some synod fathers, however, were opposed to these proposals, because they felt that they would not guarantee a reliable judgment.* In all these cases, the synod fathers emphasized the primary character of ascertaining the truth about the validity of the marriage bond" (III Extraordinary General Assembly of the Synod of Bishops, "*Relatio Synodi.*" *The Pastoral Challenges of the Family in the Context of Evangelization* (Vatican City: 2014) emphasis added).

by the commission.¹¹ Nevertheless, it is observed that disagreements remain among those consulted in preparation for the fourteenth ordinary assembly.¹²

Moreover, the two references to the above-mentioned extraordinary synod in *Mitis iudex Dominus Iesus* (one of which is repeated in *Mitis et misericors Iesus*)¹³ give the impression not that the synod was influencing the reform but that it corroborated some of the concerns addressed by the reform. That is, the Pope offers norms that correspond with some of the entreaties of some of the synod fathers for means that would make the marriage nullity process more agile and approachable.

Another aspect of consultation that was not evident during the process of reform concerns the relationship of the above mentioned pontifical commission with a study group (*Coetus studiorum*) internal to the Pontifical Council for Legislative Texts, which it created under the pontificate of Pope Benedict XVI. That study group for some years had been deliberating upon a possible reform of some of the norms of the instruction *Dignitas connubii*. The devoted and extensive activities of that commission have also been recognized by repeated, if brief, reports of the Pontifical Council itself. We read in 2009 that a study group “consisting of experts residing in Rome [was] established so that, convening each month, [it]

11. In this regard, it is notable that, on October 6, 2014, one of the members of the commission, Prof. Paolo Moneta, offered his impression that the commission would finish its proposal prior to the 2015 synod of bishops, so that the proposal would be submitted to the synod for its opinion. He states: “Anche per quanto riguarda i nostri lavori, l’indicazione è di muoverci celermente, in modo che la nostra proposta di riforma sia pronta per essere sottoposta al parere del Sinodo ordinario dei vescovi che si svolgerà nell’ottobre del 2015” (cf. <http://www.unipi.it/index.php/tutte-le-news/item/4906-giurista-dellateneo-nella-commissione-per-la-riforma-del-processo-matrimoniale-canonico>).

12. We read in no. 115 of the *Instrumentum laboris*: “[. . .] Regarding expenses, some suggest that dioceses provide a continuing service of marriage counselling at no expense. On the question of second instance for confirming sentences, a significant number are in favour of eliminating it, yet leaving the possibility of appeal to the defender of the bond or either of the parties concerned. On the contrary, no agreement exists on whether the diocesan bishop might assume responsibility for the procedure; some point out problem areas. Nevertheless, a significant number agree on the possible use of the summary process in canon law in clear cases of nullity [. . .]” (Synod of Bishops—XIV Ordinary General Assembly, *The Vocation and Mission of the Family in the Church and the Contemporary World*—“*Instrumentum Laboris*,” June 23, 2015 [Vatican City: 2015] emphases added).

13. The first is in the sixth paragraph of the preamble, and the second is in the introduction to the *Ratio procedendi in causis ad matrimonii nullitatem declarandam* appended to both documents.

might investigate certain questions pertaining to,” *inter alia*, “procedural law” (*ius processuale*).¹⁴ Later that year and in 2010 and 2011, this work “of 6–7 experts” was said to be continuing without any interruption.¹⁵ It was stated in 2012 and 2013 that they “perspired at [this work] with their whole heart and mind”¹⁶ after being given an additional encouragement by Pope Benedict XVI to explore possible reforms of the code. After describing the significant progress on the *Schema canonum* for the revision of Book VI and the progress on the study of the interrelationship between the *CIC* and the *CCEO*, the report reads: “The path of labor of the study group on matrimonial procedural law (*ius processuale matrimoniale*) continues.”¹⁷ In 2013, its work was making great progress and doing so with elegance.¹⁸

The existence and activity of this study group was mentioned publicly by the President of the Pontifical Council for Legislative Texts, Cardinal Francesco Coccopalmerio, at a conference in January 2015 at the Pontifical Gregorian University.¹⁹ According to Cardinal Coccopalmerio, this study group—again, initially approved by Benedict XVI—was approved by Pope Francis as one in some way parallel to the commission of reform that he had established on August 27, 2014. It is unknown to the general public of canonists, however, what collaboration was carried out between them, if any. Nor is there any indication that the extensive labors of the study group internal to the Pontifical Council were ever drawn upon by the pontifical commission for the reform.

Yet another aspect of consultation concerns the composition of the membership of the pontifical commission. It is notable that the world’s top experts in matrimonial procedural law were not named to the commission. One thinks in particular of Archbishop Frans Daneels, O.Praem. (Secretary of the Supreme Tribunal of the Apostolic Signatura), Bishop

14. See *Communicationes* 41 (2009) 45 sub A.

15. See *Communicationes* 41 (2009) 271, 42 (2010) 283, 43 (2011) 323.

16. “Qui Coetus toto animo et mente insudaverunt . . .” (*Communicationes* 44 [2012] 362, 45 [2013] 108, 312–313).

17. See *Communicationes* 44 (2012) 262–263.

18. *Communicationes* 45 (2013) 313: “Labor Coetus studiorum quoad ius processuale matrimoniale quam maximis itineribus progreditur necnon belle se habet.”

19. This is testified to by Msgr. Joaquín Llobell, a presenter and also a member of the aforementioned study group, in his “Prospettive e possibili sviluppi della *Dignitas connubii*. Sull’abrogazione dell’obbligo della doppia sentenza conforme,” *Periodica* 104 (2015) 238, note 3. As one honored to have participated in that conference, I, too, can testify to this, since I myself sat beside the Cardinal on the panel when he discussed this matter.

Antoni Stankiewicz (Dean *emeritus* of the Tribunal of the Roman Rota), Msgr. Gianpaolo Montini, (Promoter of Justice of the same Supreme Tribunal and professor of procedural law at the Pontifical Gregorian University), Msgr. Joaquín Llobell (long-time Referendary of the same Supreme Tribunal and ordinary professor of procedural law at the Pontifical University of the Holy Cross), Prof. Carmen Peña García (professor of the Pontifical University Comillas in Madrid and Defender of the Bond and Promoter of Justice of the Metropolitan Tribunal in that city), Fr. Manuel Jesús Arroba Conde (likewise a Referendary and ordinary professor of procedural law at the Pontifical Lateran University), and Msgr. Grzegorz Erlebach (Judge of the Tribunal of the Roman Rota). Evidently, the selection of members for a pontifical commission is entirely left to the discretion of the Supreme Pontiff. It is simply noteworthy, and somewhat perplexing, why those just mentioned were not named when they are not merely *other* experts in procedural law of equal merit to those that were named but *the leading* experts of procedural law in the Church.

The above-quoted communiqué suggests that it was only that group of men on the commission that would be making the proposal for the revision of the general legislation of the Church. And the preamble to *Mitis iudex Dominus Iesus* largely indicates likewise. We read:

Conscious of this matter, we decided to take up the reform of the process concerning the nullity of marriage, and, to this end, we assembled a Group of Men marked by learning in the law, pastoral prudence and forensic experience who, under the direction of the Most Excellent Dean of the Roman Rota, outlined a plan of reform, having certainly protected the principle of the indissolubility of the matrimonial bond. Working quickly, the Group in a brief time created an outline of such a new procedural law which, being submitted to weighty consideration, and with the help of other experts, is now placed in the present Letter.”²⁰

20. “Cuius rei conscii decrevimus reformationem processuum de matrimonii nullitate suscipere, huncque in finem Coetum congregavimus Virorum, iuris doctrina, pastorali prudentia et forensi usu insignium, qui, sub moderamine Exc.mi Rotae Romanae Decani, rationem reformationis delinearent, in tuto utique posito principio vinculi matrimonialis indissolubilitatis. Alacriter operans, brevi tempore Coetus huiusmodi novae legis processualis adumbrationem concepit, quae ponderatae considerationi subiecta, vel cum aliorum peritorum auxilio, nunc in praesentibus Litteris transfunditur” (§4).

It is unknown who these other experts are, but it seems apparent that the input from the extraordinary synod of bishops was only partially influential and that neither it nor the fourteenth ordinary assembly of the synod of bishops had any direct involvement in the proposal of the reform. This is regrettable from a collegial perspective. Nor does it seem that the study group of the Pontifical Council for Legislative Texts had any real involvement, and this is most regrettable from a technical perspective.

Regardless of these questions of legislative procedure, it is undeniable that this canonical legislation proceeds from the normative will of the supreme legislator. And while its suitability can and will be disputed by canonists and theologians, it shall have universal binding force unless and until he or his successor revokes it.

II. Guiding Principles of the Reform

Any legislative work operates on the basis of certain guiding principles, which in effect motivate the legislator to settle on the formulation of the particular norms issued. Such principles result in norms that are general and abstract, inasmuch as they are meant to apply to all cases and depend for their application on the will of the individual authority acting in the case. Here it is a question of the judge, upon whom the legislator depends for the realization of these principles in concrete cases and in the habitual judicial activity of the Church's tribunals. The chief guiding principles that seem to have motivated the reform enacted by Pope Francis are three: 1) the principle of the celerity of the process, 2) the principle of the protection of the indissolubility of marriage, and 3) the principle of proximity between the judge and the parties. This section describes each of these principles and explains how they have come to realization in the reformed norms.

A. The Principle of Celerity

Just after the coming into effect of the 1983 Code, in his January 26, 1984 discourse to the Tribunal of the Roman Rota, John Paul II underscored his aim of promoting the celerity of the marriage nullity process in the reform of the norms governing it. He identified the complaint about "the slowness and excessive length of trials" as one "which was not completely

without foundation.” Thus, “accepting a deeply felt need, without wishing to impair or in the slightest way to diminish the necessary guarantees offered by the course and formalities of tribunal procedure, [the new law] has sought to render the administration of justice more flexible and functional by simplifying procedures, speeding up formalities, shortening the time-limits, increasing the discretionary powers of the judge, etc.” The realization of such legislative reforms, however, could unfortunately be hindered by defects in application by individual ministers of justice, for example, “by delaying tactics or by a lack of care in studying cases, by an attitude of inertia that is wary of entering the new track for moving ahead, by a lack of expertise in applying the procedures.”²¹

This has likewise been a serious pastoral preoccupation of Pope Francis and is in fact *the* guiding principle of the reform just carried out. Indeed, this was explicitly stated in the above quoted Vatican communiqué, which said that the commission’s charge was to find a way to render the process “more agile” (*più snella*). And Pope Francis himself, in a January 24, 2015 address to those participating in a conference at the Pontifical Gregorian University on the tenth anniversary of the publication of the instruction *Dignitas connubii*, proposed that knowledge and experience with that body of norms could lead to the discovery of ways for abbreviating the process. And he told the Church to expect “in the future further legislative interventions directed toward this purpose.”²² Likewise, in the preamble to the new canons (§6), he declares that he was in agreement with those bishops of the extraordinary synod who were requesting that trials be made more agile (*iudicia agiliora*). And, not intending to facilitate the declaration of nullity of marriage, he wished to foster the celerity and simplicity of the process, “lest, on account of a prolonged conclusion of the trial, the

21. See *Papal Allocutions to the Roman Rota, 1939–2011*, ed. William H. Woestman (Ottawa: Saint Paul University, 2011) 184 (hereafter cited as *Papal Allocutions*). He also exhorted the Rota (and all judges) to avoid judicial delays in his discourse of January 30, 1986 (*ibid.*, 189–190, no. 6). This principle was stressed also by Paul VI in his discourses of January 11, 1965 and January 30, 1975 (*ibid.*, 81, 130–131) and by Benedict XVI in his January 29, 2010 discourse (*ibid.*, 307).

22. Francis, discourse to the Faculty of Canon Law of the Pontifical Gregorian University, January 24, 2015: AAS 106 (2015) 192–193: “La conoscenza e direi la consuetudine con questa Istruzione potrà anche in futuro aiutare i ministri dei tribunali ad abbreviare il percorso processuale, percepito dai coniugi spesso come lungo e faticoso. Non sono state finora esplorate tutte le risorse che questa Istruzione mette a disposizione per un processo celere, privo di ogni formalismo fine a se stesso; né si possono escludere per il futuro ulteriori interventi legislativi volti al medesimo scopo.”

shadows of doubt at last crush the hearts of the faithful awaiting a declaration of their status.”²³

Assuredly, the pace and length of the judicial process concerning the alleged nullity of marriage is a just concern for the supreme legislator, as well as for those entrusted with vigilance over the correct administration of justice, for ministers of justice and for pastors of souls. For those who approach the tribunal accusing their marriage of nullity are in search of something that pertains to their state in life and indeed their eternal salvation. Many unfortunately have a divorce-oriented mentality, seeing the declaration of nullity of their marriage merely as a ratification of their decision to divorce or of their situation of being a divorced person. Seeing themselves as essentially un-married, they may not appreciate the fact that they are introducing a true contention into the ecclesial society, asking that their marriage bond, (presumably) formed before God and the community and binding them in conscience before him, be declared non-existent from the time of the wedding. This defect of understanding is exacerbated when such persons have proceeded to live with another as if they were legitimately married, even while being in reality bound to another. Other persons have a more accurate understanding and are either aware of their objective state of grave immorality in cases of a subsequent attempted marriage, or are waiting to attempt another marriage in hopes of avoiding such a state of immorality, or are purely seeking clarification of their status as they discern how to respond to the divine call to holiness. Whatever the case may be, since the question of the nullity of marriage touches so intimately upon the spiritual well-being and ecclesial status of persons, it is incumbent upon the Church to adjudicate the matter as swiftly as possible, without prejudice to justice (*quam primum, salva iustitia*) and the indispensable obligation to declare the objective truth to the faithful.

In the present Franciscan reform, this principle of celerity has taken concrete form especially in the following legislative novelties:

- The elimination of the consultations of the respondent by his or her judicial vicar prior to the tribunal of the petitioner’s domicile

23. “Quibus optatis omnino consonantes, statuimus hisce Litteris dispositiones edere quibus non matrimoniorum nullitati, sed processuum celeritati faveatur non minus quam iustae simplicitati, ne, propter elongatam iudicii definitionem, fidelium sui status declarationem exspectantium dubii tenebrae diutine opprimant praecordia.”

or the forum of the majority of the proofs declaring its competence (cf. c. 1672, 2°–3°), allowing those tribunals simply to proceed to the citation upon receipt of a *libellus*;

- The ability (*facultas*) of a diocesan or eparchial bishop lacking a tribunal to entrust a cause to a neighboring tribunal (c. 1673 §2), avoiding delays in constituting his own tribunal. Notwithstanding the fact that the petitioner had requested the ministry of the approached tribunal (cf. c. 1504, 1°), the bishop also need not consult the petitioner about this decision, which should foster a more expeditious transfer of the cause;
- The generalized faculty of the diocesan or eparchial bishop to entrust a cause to a single clerical judge under certain conditions (c. 1673 §4), allowing more judges personally and more swiftly to instruct causes and bring them to a decision, without spending time scheduling a session of the college, holding a judicial discussion, and obtaining the signatures of the judges who are often not present daily in the tribunal;
- The derogation of the requirement for a double conformity of sentences, in virtue of which the tribunal first declaring the nullity of marriage no longer transmits the cause *ex officio* to the superior tribunal for its decision of whether to confirm the sentence immediately or admit the cause to an ordinary examination (cf. c. 1679 and derogated c. 1682). Evidently, this eliminates the (in practice) minimum two month period which it may normally take a superior tribunal to hear its defender of the bond and the spouses and make the decision by a collegial decision. And it eliminates also the possibility for an unappealed affirmative decision to be reformed by the superior tribunal, which in turn removes the possibility for it to be appealed to the third level of jurisdiction, and so on;²⁴
- The institution of the abbreviated process before the bishop (*processus matrimonialis brevior coram Episcopo*) has as its more pronounced

24. The principle of celerity could have been further applied in the case of an appeal after a first affirmative sentence. In the interest of such celerity, one might have expected the appellate tribunal—having established that the appeal was not merely a delay-tactic—to have the obligation first to decide whether to confirm the affirmative sentence or to admit it to an ordinary examination (cf. *vetus* c. 1682 §2), instead of demanding the ordinary contentious trial in second instance from the outset (see *novus* c. 1680 §§2–3).

aim the rapid declaration of nullity of marriages, when such nullity is considered to be manifestly evident (cf. cc. 1683–1687). For it could be carried out within a month's time if all involved act with the highest efficiency. More realistically, though, it could be completed in approximately 100 days: after the *libellus* is registered in the book of protocols and is admitted by decree, and after the judicial vicar establishes the formula of the doubt and appoints the officials, the instructor has up to thirty days to complete the session for gathering the proofs (c. 1685), the defender of the bond and the advocates have fifteen days to submit their argumentation (cf. c. 1686); then the bishop receives and examines the acts and has up to one month to publish the definitive sentence to the spouses and the defender of the bond (see c. 1610 §3; *Ratio procedendi*, art. 20 §2);

- The faculty of the superior tribunal to confirm immediately a sentence appealed merely as a delay tactic (c. 1680 §2) and of the appellate bishop to reject an appeal introduced for the same motive (c. 1687 §4) prevents the supposedly useless treatment of the matter at the second level of jurisdiction.

B. The Protection of the Indissolubility of Marriage

Another principle guiding the reform is the need for there to be some procedural protection of the indissolubility of marriage in the Church. As is stated in the preamble, Pope Francis sought to be in concert with his predecessors in providing for “the demand . . . of greatly protecting the truth of the sacred bond” (§7). And so the new legislation proposes again the ordinary contentious judicial process as the standard path for challenging the presumed validity of marriage, as well as an abbreviated process before the diocesan or eparchial bishop as an alternative, when the nullity of marriage is manifestly evident and both spouses consent to that process. As judicial processes, the judge in making his decision may not act out of a favorable sentiment in the name of charity or mercy; but he is bound to reach moral certitude about the alleged nullity of marriage prior to declaring it by definitive sentence (see *Ratio procedendi* art. 12).

The protection of marriage also motivated Pope Francis to confirm the important function of the defender of the bond, who institutionally represents and actualizes the Church's solicitude for the dignity of marriage.

Prior to issuing this legislation he had underscored the importance of the defender of the bond, mentioning, for example, his “duty to appeal, even to the Roman Rota, against a decision he considers injurious to the truth of the bond.”²⁵ And the new legislation recapitulates a number of the defender of the bond’s procedural rights, in particular: to be cited (c. 1676 §1), to be heard prior to the formulation of the doubt and the decision about whether the cause is to be treated via the ordinary process or the abbreviated process (c. 1676 §2), to be fully involved in the instruction of the cause in accord with his function (cf. c. 1677 §1), to appeal or propose a complaint of nullity against the sentence (cc. 1680 §1, 1689) or make a new proposition of the cause (cf. c. 1681); in the abbreviated process, to propose observations (c. 1686; see also cc. 1688, 1690) which are to be weighed by the bishop before he makes his decision (c. 1687 §1) and, since an affirmative decision is a definitive sentence, to appeal or propose a complaint of nullity against it (cf. cc. 1626 §1, 1628, 1687 §3).

C. The Principle of Proximity and Accessibility of the Process

As supreme shepherd of the Church on earth, Pope Francis’ reform has also been motivated by zeal for the more personal care of the faithful who find themselves in need of the Church’s ministry of justice. Should those who wish to approach the Church’s tribunals encounter interpersonal or financial obstacles, the Church would fail to shine forth in the world as the mirror of justice. Accordingly, echoing the teaching of Benedict XVI,²⁶ he has insisted on what he calls the principle of proximity and has promoted greater accessibility of the marriage nullity process for the faithful.

Indeed, in the preamble to the new canons (§6), he declares that he was in agreement with those bishops of the extraordinary synod of October 2014 who were requesting that trials be made easier to access (*iudicia . . . faciliora accessu*). This was already a concern of his, as was made evident in his first two annual discourses to the Tribunal of the Roman Rota. In 2014, he already began to describe the principle of proximity between the judge and the parties in these terms: “As a result, superficial knowledge

25. See Francis, discourse to the Plenary Session of the Supreme Tribunal of the Apostolic Signatura, November 8, 2013: AAS 105 (2013) 1153. See also Francis, discourse to the Faculty of Canon Law of the Pontifical Gregorian University, January 24, 2015: AAS 106 (2015) 193.

26. Benedict XVI, discourse to the Roman Rota, January 28, 2006: *Papal Allocutions*, 292: “It is nonetheless a grave obligation to bring the Church’s institutional action in her tribunals ever closer to the faithful.”

of the situation of people awaiting [the judge's] judgment will not suffice; rather, he will feel the need to enter more deeply into the situation of the parties involved, studying in depth the documents and every element relevant to the judgment." And in this connection he emphasizes that the judge is a shepherd, whose service to the people of God is the administration of the justice which they await.²⁷ And in 2015 he revealed his aspiration that all matrimonial processes might be free of charge for the parties,²⁸ which aspiration he renews in the preamble (see "VI.—*Episcoporum Conferentiarum officium proprium*," §3). This would include the goal of there being little expense to parties and witnesses who give their testimony at their local tribunal (cf. *Ratio procedendi* art. 7 §2).

In regard to the principle of proximity, he declares that the charity and mercy of the Church compel some outreach to those who cannot approach the Church's judicial ministry "due to physical or moral distance" (preamble §5). He concretizes this concern in several norms complementary to the *motu proprio* proper, namely, in the *Ratio procedendi*. There he exhorts bishops and pastors of parishes to keep (or now place) separated and divorced members of the faithful within their pastoral solicitude (art. 1). In particular, there are to be structures on the diocesan/eparchial and parish levels for aiding those in doubt about their juridical condition or convinced of the nullity of their marriage, so that they may discern whether and how to initiate an ordinary or abbreviated marriage nullity process (cf. art. 2). Local ordinaries/hierarchs are in fact to appoint suitable persons to carry out this work, not excluding interdiocesan/intereparchial or (presumably) interecclesial cooperation (cf. art. 3). This pastoral effort may even result in assistance with the preparation of the *libellus* and the initial approaching of the competent tribunal (cf. artt. 4–5).

Within the dynamics of the process, it seems to be the *mens legislatoris* that the competent forum that best promotes the proximity of the judge with the parties is to be used (see artt. 7 §1, 19). The principle of prevention is not operative here, such that a competent tribunal that does not foster this proximity becomes incompetent (cf. c. 1415). This *mens* rather amounts to a deontological principle, obliging the judge in conscience to promote the proximity of the judge and the parties.

27. See Francis, discourse to the Tribunal of the Roman Rota, January 24, 2014: AAS 105 (2014) 89–90.

28. See Francis, discourse to the Tribunal of the Roman Rota, January 23, 2015: AAS 106 (2015) 185.

III. Critical Analysis of the Reform

Being a reform of norms that touch upon a matter of such grave importance in the Church, and one that was carried out so quickly and with minimal consultation, it should come as no surprise that it may be open to some scholarly critique. The critique of canonical legislation, when carried out in a spirit of religious respect and obedience, is meant to be a service to the legislator and the Church. For the norms issued by Pope Francis in this case, as with so much of the Church's legislation, are human in nature and are thus ever subject to reform. While the new norms are binding and must assuredly be observed, a critical analysis of them may reveal how they may best be observed in a spirit of continuity with the Church's sacred discipline and the teaching of her magisterium.

A. Prevalence of the *Favor celeritatis* over the *Favor matrimonii*

The whole matrimonial canonical system rests on the foundation of the *favor matrimonii*, that is, the orientation of the juridical order to protect the stability of marriage, from the preparation of spouses for a free and total act of love toward one another (*matrimonium in fieri*), to its fruitful liturgical celebration, to its realization in the conjugal life of the spouses and the building up of the Christian family (*matrimonium in facto esse*). When spouses confront difficulties in their common life leading even to their separation, the *favor matrimonii* does not cease. Rather, marriage continues to be protected and cherished, and the community abides in hope of the spouses' reconciliation, especially through their recourse to the grace that is offered them through their marriage. If the Church's judiciary is called upon to examine the alleged nullity of the marriage, the *favor matrimonii* is not compromised, since it is wholly in harmony with the *favor veritatis*. Thus, a just declaration of nullity of marriage does not injure the *favor matrimonii*, since the marriage bond *in casu* is examined in a serious manner by the competent authority of the Church and is deemed not ever to have existed. In the same way, a just negative decision defends the marriage and pronounces the perpetuity of the bond notwithstanding the choice of one or both spouses to dissolve their common life.²⁹

29. On the *favor matrimonii* and the place of the marriage nullity process within the Church's sought after culture of indissolubility, see John Paul II's January 28, 2002 discourse to the Roman Rota in *Papal Allocutions*, 270, no. 7.

When a marriage is challenged before the Church's judiciary, it is carefully examined according to the procedural norms applicable in the case—as a rule, the norms governing the ordinary contentious process. In carrying out that process, the judge is bound by the principle of celerity to proceed as expeditiously as possible, considering that the spiritual good of the parties is at stake. The adage *quam primum, salva iustitia* (c. 1453) thus intersects with the *favor matrimonii* when applied to causes of nullity of marriage. For justice in such causes has a notably public dimension, inasmuch as the validity and dignity of marriage are a public good not merely within the private interests of the spouses and their family. The ecclesiastical judge, therefore, proceeds as expeditiously as possible without doing the least harm to the truth about marriage (*quam primum, salvo matrimonio*). Thus, the principle of the celerity of the process is always subordinate to the protection of the indissolubility of marriage through a judicial process instrumental for discovering the truth.

This is testified to, for example, in the *motu proprio* of Paul VI issued after the Second Vatican Ecumenical Council and during the process for the revision of the Latin Code, in which he highlighted the Church's constant solicitude for the protection of the sanctity of marriage and her concern that the spiritual state of the faithful not become more serious as a result of unduly delayed marriage nullity trials.³⁰ Also, in reflecting on that reform in his January 30, 1975 discourse to the Roman Rota, he observed that he was moved to enact the reform in order “to render the exercise of judicial power more flexible and thus more pastoral.” He, however, reminded the Church of the primacy to be given to the *favor veritatis*, laying emphasis on the *salva iustitia* of the above quoted adage. He continues: “Flexibility and pastoral concern will not, of course, prejudice the standards of truth and justice, which must be scrupulously observed in

30. Paul VI, *motu proprio Causas matrimoniales*, March 28, 1971: AAS 63 (1971) 441, 442: “Causas matrimoniales peculiari semper cura sancta Mater Ecclesia prosecuta est, quae quidem per eas sanctitatem germanamque naturam sacri vinculi matrimonii nititur tueri. Ecclesiasticorum enim iudicum ministerium aperte ostendit—etsi modo sibi proprio—pastoralem caritatem Ecclesiae, quae probe novit, quantopere in iudiciis matrimonialibus animarum saluti consulatur. . . . Mater Ecclesia fore quidem confidit, ut studium, a novissimo Oecumenico Concilio in matrimonii spirituali bono pastoralique cura illustrandis atque promovendis collocatum, fructus suos gignat, etiam quod ad firmitatem matrimonialis vinculi attinet; verumtamen ipsa vitare simul, opportunis statutis normis, exoptat, ne nimia iudiciorum matrimonialium diuturnitas plurium filiorum suorum spirituale statum reddat graviolem.”

a trial,” which standards are to be under the wise solicitude of the bishops.³¹ Likewise, on January 28, 1978, in his final discourse to the Rota, he states directly that “expeditiousness (*celerità*) is certainly desirable and is constantly being asked of you. At the same time, however, it must always be subordinate and at the service of the primary goal, which is justice.”³²

This was reiterated somewhat emphatically by John Paul II in his final discourse to the Roman Rota, delivered on January 29, 2005:

Lastly, the *preliminary investigation of the case* is an important stage in the search for the truth. The very reason for its existence is endangered and degenerates into pure formalism when the outcome of the proceedings is taken for granted. It is true that the entitlement to timely justice is also part of the concrete service to the truth and constitutes a personal right. Yet *false speed* to the detriment of the truth is even more seriously unjust.³³

This was not the first time he addressed this theme. On February 26, 1983, in the context of discussing the demand of reaching moral certitude before declaring the nullity of marriage and the use of a correct jurisprudence, he stated this: “If it is true that the new Code clearly imposes the obligation of rapidly bringing all processes of first and second instance to completion ([*CIC*] c. 1453), this must not result in the detriment of justice and protection of the rights of all the parties to the cause and the community of which they are members.”³⁴ Elsewhere, he declared that causes of nullity of marriage should “be completed with the seriousness and swiftness required by their very nature,”³⁵ and the judge should “give priority to the search for truth.”³⁶

We respectfully observe, however, that in this reform of Pope Francis the *favor matrimonii* seems to have been subordinated to the *favor celeritatis*. That is, the celerity of the process, which is valuable in itself as emphasized above (*vide supra* II.A.), has prevailed as a principle over the judicial protection of the indissolubility of marriage (which has been little emphasized by Pope Francis’ magisterium, to date). In fact, given the real dynamics of

31. *Papal Allocutions*, 132.

32. *Papal Allocutions*, 145. He continues by teaching that the reforms he had instituted were always to respect the “essential finality” of the process, namely, after a “conscientious examination of cases . . . to pass judgments which are conform[ed] to objective truth and issued ‘with God alone before our eyes’” (*ibid.*, 146).

33. *Papal Allocutions*, 284, no. 6, emphasis in original.

34. *Papal Allocutions*, 179, no. 4.

35. January 17, 1998: *Papal Allocutions*, 247, no. 5.

36. January 21, 1999: *Papal Allocutions*, 249, no. 2.

judicial praxis in the Church, especially in North America, some of his legislative choices could in reality turn to the detriment of the indissolubility of marriage, if they are not implemented with the greatest care. This can be seen in particular in the institute of the abbreviated process before the bishop and the derogation of the requirement for a double conformity of sentences.

1. The Abbreviated Process before the Bishop (cc. 1683–1687)

As is plain to see from the papal teachings cited throughout this study, the consolidated teaching of the magisterium of the Church and the sacred discipline established by the Supreme Pontiffs has expressly emphasized with consistency the primacy of giving protection to the dignity and sanctity of marriage, lest the Church fail to proclaim its indissolubility, which has been so undermined throughout the West, especially through the liberal authorization of divorce in the secular juridical orders. Any reform of the procedural norms governing causes of nullity of marriage have boasted of promoting and preserving this ideal.

In addition, the administrative norms approved by the Roman Pontiffs in application of the norms of matrimonial procedural law have clearly emphasized the highest value of protecting the indissolubility of marriage. In this regard, we read the following in the preamble of the instruction *Provida Mater Ecclesia* issued in 1936:

In order that the provident Mother Church may protect the dignity of marriage and look after the salvation of souls, she employs her continuous solicitude by Constitutions and Instructions, prescribing rules pertaining, among other things, to causes concerning the validity of marriage, lest what God has joined man may dare to separate or, on the other hand, declare as valid the same bond suffering from nullity.³⁷

Likewise, the first words of the instruction *Dignitas connubii* issued in 2005 described its principal aim in these terms:

The dignity of marriage, which between the baptized ‘is an image and participation in the covenant of love of Christ and the Church’ [*Gaudium et spes*

37. Sacred Congregation for the Discipline of the Sacraments, instruction *Provida Mater Ecclesia*, August 15, 1936: AAS 28 (1936) 313: “*Provida Mater Ecclesia, ut matrimonii dignitatem tueretur, animarumque saluti consuleret, constantem adhibuit sollicitudinem sive Constitutionibus sive Instructionibus, regulas inter alia praescribens causas de matrimonii valore respicientes, ne, quod Deus coniunxit, homo separare auderet, vel ex adverso validum idem enuntiaret vinculum nullitate laborans.*”

48d], demands that the Church with the greatest pastoral solicitude promote marriage and the family founded in marriage, and protect and defend them with all the means available.³⁸

It is with some surprise, therefore, that one reads in the present reform an acknowledgement that the new institute of the abbreviated process before the bishop could place the indissolubility of marriage in jeopardy. In the preamble, the supreme legislator states: "Nevertheless, it is not hidden from us how much the principle of matrimonial indissolubility could be at risk from the abbreviated trial"; and he proposes that having the bishop as the judge would constitute a safeguard in this matter.³⁹ Prior to the project of this reform, one could not have imagined such a risk being voluntarily taken (*motu proprio*) by the Supreme Pontiff, guardian of the Christian family on earth.

The admitted risk posed by the very institute of the abbreviated matrimonial process before the bishop may take several forms. In particular, one may note the risk of judicially examining the difficult question of the alleged nullity of matrimonial consent with too much haste and that of doing so with an unjustly broadened notion of the nullity of consent.

1) In regard to the speed of such a process, it should be clear to those personally engaged in the administration of justice that space and time are needed for a thorough instruction of a cause and a serene pondering of the law and the facts, so that one may arrive at a just judgment. As Paul VI eloquently taught in his last discourse to the Roman Rota on January 28, 1978: "To assure judges of the atmosphere they need for a calm, attentive, carefully thought out, complete, and indeed, exhaustive examination of the questions at issue, and also to assure the parties of a real opportunity to explain their own positions, canon law prescribes a course of action which is defined by careful norms," namely, the norms governing

38. "Dignitas connubii, quod inter baptizatos 'est imago et participatio foederis dilectionis Christi et Ecclesiae' postulat, ut Ecclesia matrimonium et familiam in coniugio fundatam, maxima sollicitudine pastorali promoveat atque omnibus quibus potest mediis protegat ac defendat."

39. "Nos tamen non latuit, in quantum discrimen ex breviato iudicio principium indissolubilitatis matrimonialis adduci possit; eum nimirum in finem volumus ipsum Episcopum in tali processu iudicem constitui, qui in fide et disciplina unitati catholicae cum Petro ob suum pastoris munus quam qui maxime caver" (preamble, "IV.—*Processus brevior*," §2). The Italian of the quoted text reads: "Non mi è tuttavia sfuggito quanto un giudizio abbreviato possa mettere a rischio il principio dell'indissolubilità del matrimonio."

the judicial process (*ius processuale*) which, he says, are “the fruit of tested experience.”⁴⁰

Moreover, there is a risk that the Church will only exacerbate the common cultural impression according to which the grave obligations arising from matrimonial consent may in practice be dismissed by a simple procedure. And this will make it all the more difficult for the Church to proclaim with credibility her teaching on the indissolubility of marriage. In this connection, in his January 24, 1981 discourse to the Roman Rota, John Paul II underlined his grave pastoral concern about the easy and swift declarations of nullity of marriage issued by some tribunals of the Church. Likely, some of the tribunals he had in mind were those of the United States of America, before which marriages were routinely declared null by a single judge with no judicial controls by the appellate tribunal. He explained that, like divorce, this problem may make the preparation of future spouses for a perpetual conjugal union to be much more difficult. He declared that

the preparation for matrimony itself could be negatively influenced by declarations or judgments of matrimonial nullity if these would be *too easily obtained*. If among the evils of divorce exists the danger of making the celebration of matrimony less serious and demanding to the point that today among many young people it has lost its due consideration, we must also fear that judgments of declaration of matrimonial nullity, if they were to multiply as *easy and hasty pronouncements*, would add to the same existential and psychological perspective.⁴¹

There is a risk that this same impression may result from a routine or too frequent use of the new abbreviated process.

2) In regard to a broadened notion of nullity of marriage, the new process is predicated on the situation of the alleged nullity being based on “particularly evident arguments” (preamble, “IV.—*Processus brevior*,” §1) or facts which “render nullity manifest” (c. 1683, 2°). One wonders if this could be applied in such a way as to bring to realization the following concern of John Paul II described in his January 29, 2004 discourse to the Roman Rota: “The tendency to instrumentally broaden the causes for nullity, losing sight of the bounds of objective truth, involves a structural

40. *Papal Allocutions*, 145.

41. *Papal Allocutions*, 167, no. 4, emphases added.

distortion of the entire process.”⁴² In other words, the ordinary process involves a moderated and steadily evolving dialectic that allows the judge and all the participants in the trial to penetrate the hidden reality of the internal consent of the will of the spouses at the time of the wedding. Now, however, in order to treat the matter more rapidly, it seems that the subtlety of the question is minimized, such that consent could be considered vitiated for lighter reasons or without full proof. The very list of examples proposed by the legislator in art. 14 §1 of the *Ratio procedendi*, while not establishing new *capita nullitatis*, gives one the impression that nullity can occur in a way heretofore unanticipated.

2. The Derogation of the Requirement of a Double Conformity of Sentences

The most profound modification internal to the ordinary contentious process for causes of nullity of marriage is the derogation of the requirement of a double conformity of sentences from the general legislation governing the marriage nullity process. We read in the new canon 1679 of the *CIC*: “A sentence which first declares the nullity of a marriage becomes executable, once the time limits ordered by canons 1630–1633 have passed”⁴³ (cf. *CCEO* new c. 1365). This is the most profound, because it eliminates a safeguard of the indissolubility of marriage that had been established by Pope Benedict XIV in 1741⁴⁴ and confirmed by solemn acts of several of his successors throughout the last one hundred years—namely, by Pius X and Benedict XV in canon 1986 of the 1917 code, by Pius XI in art. 212 §2 of the instruction *Provida Mater Ecclesia* approved by him,⁴⁵ by Paul VI in the revisions instituted in the early 1970s,⁴⁶ and by John Paul II in canon 1682 of the *CIC*, in canon 1368 of the *CCEO* and in art. 265 of the instruction *Dignitas connubii* approved by him.

42. *Papal Allocutions*, 280, no. 6.

43. “Can. 1679. Sententia, quae matrimonii nullitatem primum declaravit, elapsis terminis a cann. 1630–1633 ordinatis, fit executiva.”

44. See Benedict XIV, constitution *Dei miseratione*, November 3, 1741: in *Codicis iuris canonici fontes*, vol. 1, ed. Pietro Gasparri (Rome: Typis Polyglottis Vaticanis, 1926) 698, §8.

45. See Sacred Congregation for the Discipline of the Sacraments, *Provida Mater Ecclesia*, at 314 and 355.

46. See Paul VI, *Causas matrimoniales*, 444, no. VIII; Paul VI, motu proprio *Cum matrimonialium*, September 8, 1973: *AAS* 65 (1973) 579, no. VIII.

Now, it appears to be a statistical fact that throughout the world,⁴⁷ and most especially in the United States,⁴⁸ the appellate tribunals, to which causes were transmitted *ex officio* by a tribunal first declaring the nullity of marriage, have confirmed the affirmative sentence in a great majority of cases—whether immediately or after carrying out an ordinary contentious process. This may give one the impression that the requirement of a double conformity of sentences, and the just-cited, now derogated procedural institute has been superfluous and thus not necessary for protecting the indissolubility of marriage.

This conclusion, however, fails to consider the example of the Tribunal of the Roman Rota, whose jurisprudence is of the highest value in the canonical system of matrimonial nullity,⁴⁹ including its jurisprudence in the area of the confirmability of an affirmative sentence. That jurisprudence has consistently and authoritatively taught that an affirmative sentence cannot be legitimately confirmed by the superior tribunal unless the superior college of judges is itself morally certain of nullity of the marriage in the case. It is illegitimate to reduce its task to a superficial review of the case, giving favor not to the validity of the marriage but to the affirmative sentence.⁵⁰ Moreover, the example of the Roman Rota has demonstrated that affirmative sentences are often not suitable for immediate

47. See Llobell, "Prospettive e possibili sviluppi," 256–257; idem, "Verità del consenso e nullità del matrimonio: il processo dichiarativo di nullità," in *Matrimonio e famiglia. La questione antropologica*, Subsidia Canonica 15 (Rome: EDUSC, 2015) 249–250.

48. See William L. Daniel, "Ongoing Difficulties in the Judicial Praxis of American Tribunals in Causes of the Nullity of Marriage," *The Jurist* 74 (2014) 256–257.

Statistics more recent than the ones cited there have been published as submitted voluntarily to the CLSA concerning the activity of American Tribunals during the year 2013. The responding appellate tribunals issued 7,235 decrees of confirmation, 1,779 affirmative sentences, and 135 negative sentences; in other words, 98.5% of the marriages examined at the appellate level were considered to be invalid; and the presumed validity of only 1.5% of those marriages was vindicated. 32 of the 61 responding tribunals issued no negative decisions in second instance, never failing to confirm an affirmative sentence. See "U.S. Tribunal Statistics 2013," *CLSA Proceedings* 76 (2014) 451–452.

49. The directive, unifying value of the jurisprudence of the Roman Rota in the matter of the nullity of marriage has been one of the richest areas of canonical teaching in the pontifical magisterium. See especially Benedict XVI's 2008 discourse to the Roman Rota (*Papal Allocutions*, 298–301) and those of John Paul II from 1981 (*ibid.*, 168, no. 5), 1983 (*ibid.*, 178–179, nn. 4–5), 1984 (*ibid.*, 184–185, nn. 6–7), 1986 (*ibid.*, 189 and 190, nn. 5 and 7) and 1992 (*ibid.*, 220–221, no. 4), among others.

50. On this jurisprudence, see Grzegorz Erlebach, "I motivi di rinvio ad esame ordinario nella giurisprudenza della Rota Romana," in *La procedura matrimoniale abbreviata*, Studi Giuridici 49 (Vatican City: Libreria Editrice Vaticana, 1998) 31–58, esp. 56–58. See also William

confirmation. Its own statistical reports reveal that it has admitted causes to an ordinary examination much more frequently than it has confirmed affirmative sentences. Here are its statistics in the matter from 2000 to 2012:

JUDICIAL YEAR ⁵¹	Decrees of Confirmation	Decrees of Admission to Ordinary Examination
2012	12	48
2011	27	63
2010	27	61
2009	23	71
2008	12	69
2007	16	64
2006	17	43
2005	21	61
2004	30	53
2003	21	51
2002	15	35
2001	16	57
2000	14	54
Total	251 (25.6%)	730 (74.4%)

Notwithstanding the activity of local tribunals viewed at a glance nationally, this data reveals that in almost 75% of the causes presented to the Roman Rota, it does not confirm affirmative sentences. In other words—to state it somewhat provocatively—about 75% of the affirmative sentences transmitted to the Rota for possible immediate confirmation

L. Daniel, “Motives in *decernendo* for Admitting a Cause of Marriage Nullity to an Ordinary Examination,” *Studia Canonica* 45 (2011) 67–120.

51. For these statistics, respectively, see *L'attività della Santa Sede nel 2012* (Vatican City: Libreria Editrice Vaticana, 2012) 664, *sub* 1.5 and 1.7; *L'attività della Santa Sede nel 2011* (Vatican City: Libreria Editrice Vaticana, 2011) 640, *sub* 1.5 and 1.7; *Quaderni dello Studio Rotale* 21 (2011) 60, *sub* 1.5 and 1.7; 20 (2010) 73, *sub* 1.5 and 1.7; 19 (2009) 55, *sub* 1.5 and 1.7; 18 (2008) 89, *sub* 1.5 and 1.7; 17 (2007) 115, *sub* 1.5 and 1.7; 16 (2006) 79, *sub* 1.5 and 1.7; 15 (2005) 60, *sub* V and VI; 14 (2004) 148, *sub* 5 a) and b); 13 (2003) 170 and 172, *sub* 6 a) and b); 12 (2002) 192, *sub* c)—aa) and bb); 11 (2001) 186, *sub* c)—1° and 2°.

unjustly declared the nullity of marriage, whether because of a defect of proofs or a lack of foundation for the claim of nullity. Therefore, the requirement of a double conformity of sentences was not a superfluous institute falling somehow outside of the rationality of the canonical order. Rather, it was one that was poorly implemented and which the Apostolic See had not yet been able to address effectively, given the little heed that seemed to be paid to the guidance of the Apostolic Signatura in its function of providing for the correct administration of justice and to the consistent and thoroughly sound example of the Roman Rota. If the derogation was based merely on the empirical information gathered from local tribunals, it would seem that the consistent experience of the aforementioned apostolic tribunals was not duly weighed. This thus constitutes an eloquent example of the minimal influence of the *favor matrimonii* in the work of the reform.

B. Spirit of Favor toward Those Introducing Contention into the Sacramental Order

In the context of encouraging regional initiatives to bring to realization the Pope's aspiration for a free marriage nullity process, the reform describes the Church in this context as "a generous mother to the faithful" who, "in a matter so strictly connected to the salvation of souls, reveals the free love of Christ by which we have all been saved."⁵² Assuredly, those cases of truly impoverished persons or those with quite limited means who wish to challenge the validity of their marriage should not be left without some assistance, even total aid, for pursuing their cause, this being a fundamental right in the Church (cf. cc. 221 §1, 1674 §1, 1°).

At the same time, one wonders if this posture of charity is not somewhat overstated. It is indisputable that the Church's ministry should reflect that of her divine founder, who though rich in divine majesty took the form of a slave, lived a life of simple poverty, subjected himself to suffering and death, and freely offers to all divine mercy and life eternal. This particular ministry of the Church, though, while it is ever to be exercised

52. "Una cum iudicis proximitate curent pro posse Episcoporum Conferentiae, salva iusta et honesta tribunalium operatorum mercede, ut processuum gratuitati caveatur et Ecclesia, generosam matrem se ostendens fidelibus, in re tam arcte animarum salutis cohaerente manifestet Christi gratuitum amorem quo salvi omnes facti sumus" (preamble, "VI.—Episcoporum Conferentiarum officium proprium," §3).

with a demeanor of charity and compassion, is in its essence a ministry of justice. Those who approach the tribunal challenging the validity of their marriage, even if they may have been unjustly abandoned through the sin of their spouse, are asking the Church to declare that a sacred bond, and often even a sacrament of the new covenant, does not in fact exist—that is, that what the community thinks and presumes is a marriage, and one which may have even given birth to new human persons, is not a marital bond and does not bind them, even before God. Actually, the *libellus* could be considered an unjust act if it stirs up the contention of marital nullity when one in reality harbors a divorce-oriented mentality and in effect wants the Church to dissolve the bond. It could therefore be asked whether a global exemption from judicial fees is just toward the ecclesial society.

Even more broadly, and perhaps with particular attention to those regions of the Church that have a smoothly functioning judiciary, one could question the merit of the accessibility of the process to the faithful when it is so frequently employed with this divorce-oriented mentality. For, it needs to be recalled that, while giving the faithful convenient access to the Church's judiciary is a requirement of justice, the fulfillment of which should be motivated also by charity and mercy, declarations of nullity of marriage are not something to be promoted in the Church. Quoting Pius XII, John Paul II emphasized in 1981 that “everyone knows that the Church is rather wary and disinclined to favor them.”⁵³

C. Legislative Suspicion against Judicial Appeals

One element that is somewhat unsettling to see in the revised norms, which, as procedural norms, are in the first place meant to direct and give expression to the protection and vindication of the rights of Christ's faithful,⁵⁴ is a tone of suspicion against the decision one may make to appeal a definitive sentence. The preamble expresses caution about there being any abuse of the right of appeal,⁵⁵ and this is received into the

53. *Papal Allocutions*, 168, no. 4.

54. This is observed in the very title of the *schema* of what would become Book VII of the Latin Code. See Pontifical Commission for the Revision of the Code of Canon law, *Schema canonum de modo procedendi pro tutela iurium seu de processibus*, November 3, 1976: *Communicationes* 41 (2009) 350–447.

55. “. . . cauto tamen in eiusdem appellationis disciplina ut quilibet cohibeatur iuris abusus, neque quid salus animarum detrimenti capiat” (preamble, “VII.—Appellatio ad Sedem Apostolicam,” §1).

revised canons themselves, which anticipate an appeal that is “merely dilatory” (*mere dilatoria*), or a delay-tactic (cc. 1680 §2, c. 1687 §4).

Now, it is true that the Church’s judiciary has been prone to some paralysis due to obstructionist maneuvers carried out by parties, perhaps with the counsel of an advocate. This is most especially a concern when it is a matter of the multiplication of recourses within the trial, making it very difficult to proceed smoothly. For example, a respondent who within one trial makes recourses against the decrees of the *ponens* to the college of judges by which the formulation of the doubt is established, a witness is excluded, an expert is appointed, and an extension is denied is probably obstructing the steady course of a trial.⁵⁶ Or a defender of the bond who routinely makes complaints of nullity and new propositions of causes may be obstructionistic.

The appeal, however, is an ordinary remedy that directly and principally concerns the merits of the case, namely, the alleged nullity of marriage.⁵⁷ The one who exercises this ordinary right should be favored with the presumed will simply of wishing to vindicate his right to a second hearing in the matter by a competent appellate judge. This is especially true in the case of an affirmative sentence in a system that rests on the foundation of the *favor matrimonii*. Therefore, a respondent’s appeal against an affirmative decision cannot be considered a mere delay tactic because he wants the marriage to be considered valid; it should be presumed that he wishes to exercise his right to vindicate the validity of his marriage. Otherwise, the tribunal may show itself to have fallen prey to the “anti-respondent syndrome” in virtue of which the respondent’s involvement in or bewilderment about the process or his or her attempts to defend the validity of marriage are experienced as threatening to the tribunal and the supposedly pastoral aim of helping the petitioner enter a new marriage.⁵⁸ In fact, the appellate tribunal/bishop is under no obligation to ascertain the motives of the appellant. It should simply proceed to handle the appeal, unless it is evident that it is merely a delay tactic (e.g., the respondent knows the

56. On this problem, see John Paul II’s January 22, 1996 discourse to the Roman Rota, in *Papal Allocutions*, 239, no. 4.

57. It should be noted that, in his celebrated January 26, 1989 discourse to the Roman Rota on the right of defense, John Paul II acknowledged the problem of “obstructionism” in the exercise of this right; but he laid much greater emphasis on the right of appeal. See *Papal Allocutions*, 204–208.

58. Cf. Tribunal of the Roman Rota, Decree c. Doran, *Litoris palmen.*, *Nullitatis matrimonii*, *Nullitatis sententiarum*, November 29, 1990: *RRDecr* 8: 194–195, no. 17.A.

petitioner has a hoped-for wedding scheduled for a couple weeks later and is appealing only to impede that event). It would be the burden of the one aggrieved by the appeal to reveal this to the appellate judge.

D. Relationship with the Instruction *Dignitas connubii*

Just as the work of the reform seemed entirely to discount the detailed examinations of the instruction *Dignitas connubii* on the part of the Pontifical Council for Legislative Texts during the period 2009–2015,⁵⁹ so the *motu proprio* governing the Latin Church seemed entirely to ignore the existence of the same instruction. While *Dignitas connubii* was not a reform of the marriage nullity process, it was a very large undertaking within the Roman Curia accomplished just ten years ago with the aid of those most expert in the Church's sacred discipline regulating the same process. Were there no insights from *Dignitas connubii* upon which to draw in the work of this reform? More practically, the same instruction has been the object of study of ministers of justice throughout the world, and there have been continued efforts up to now for its correct application; have these efforts been in vain?

These questions aside, the fact of the reform and the *motu proprio*'s silence about the instruction *Dignitas connubii* may leave ministers of justice with questions about the status of the instruction and its relationship to the *motu proprio*. This is especially so in view of the simultaneous issuance of the *Ratio procedendi*. We treat here, therefore, the juridical nature of the *Ratio procedendi* and the status of the instruction *Dignitas connubii*.

1. The Juridical Nature of the *Ratio procedendi*

Subsequent to the text of the *motu proprios*, beneath Pope Francis' signature, there is a brief body of norms entitled *Ratio procedendi in causis ad matrimonii nullitatem declarandam* ("Manner of Proceeding in Causes for Declaring the Nullity of Marriage"). They are not part of the *motu proprio* but are attached to it. While the *motu proprio* is clearly a document containing general pontifical legislation, and in fact an emendation of the codes themselves, the *Ratio procedendi* does not alter the codes and is in no way to be inserted into them. This gives rise to the question of

59. *Vide supra* section I.

their juridical nature, which is important in order to appreciate the scope of their binding force.

After giving the text of the reformed canons of Chapter I of Title I of Part III of Book VII of the Latin Code and Article 1 of Chapter I of Title XXVI of the Eastern Code *De causis ad matrimonii nullitatem declarandam*, the *motu proprios* identify and briefly describe the *Ratio procedendi* in these words: “A *ratio procedendi* is connected to the present [Apostolic Letter], which we bring forth for the correct and accurate necessary application of the renewed law to be zealously observed for fostering the good of the faithful.”⁶⁰ And article 6 of the *Ratio* itself says that “the present *Ratio* does not intend to explain in detail the substance of the whole process but above all to describe and, where necessary, to complete the principal innovations of the law.”⁶¹ These texts offer some indications as to the juridical nature of the *Ratio procedendi*.

In the first place, it is clear that the author of the *Ratio procedendi*—that is, the authority from which it emanates—is Pope Francis himself, the supreme legislator. For, not only is no other authority indicated (e.g., a dicastery of the Roman Curia), but he identifies himself in the first person plural as the one issuing it: “*ratio procedendi, quam duximus.*” They are thus norms of the supreme legislator of the Church.

What is less clear is whether they are legislative norms or administrative norms. While the Supreme Pontiff is a legislator, the supremacy of this designation does not make him *merely* a legislator. Indeed, apart from being a legislator and in addition to being the supreme judge of the whole Catholic world,⁶² he is also the supreme organ of public ecclesiastical administration.⁶³ Accordingly, he is assuredly competent to issue acts of the executive power of governance. Apart from singular administrative acts (cf. *CIC* c. 35; *CCEO* c. 1510), this power is what is exercised in issuing general administrative norms. Canonical doctrine distinguishes between three classes of such norms: general executory decrees, instructions, and

60. “*Praesentibus adnectitur ratio procedendi, quam duximus ad rectam accuratamque renovatae legis applicationem necessariam, studiose ad fovendum bonum fidelium servanda.*”

61. “*praesens ratio non intendit summam totius processus minute exponere, sed praecipuas legis innovationes potissimum illustrare et ubi oporteat complere.*”

62. Cf. *CIC* cc. 1405 §1, 1442; *CCEO* cc. 1059 §1, 1060 §1.

63. Cf. *CIC* cc. 135 §1, 331, 333 §1; *CCEO* cc. 43, 45 §1, 985 §1.

independent norms.⁶⁴ The first two have largely the same character but a diverse audience. They both aim to prescribe how the norm of law (*lex*) is to be observed, whether this is a matter of determining some procedure or other rules for implementing it, explaining its proper meaning, or urging its observance (cf. *CIC* cc. 31 §1, 34 §1).

General executory decrees have the same audience as the legislation they are implementing (*CIC* c. 32), namely, “a community capable of receiving the law” (*CIC* c. 29); for this reason, they are to be promulgated in the same way that the law was promulgated (cf. *CIC* c. 31 §2). Instructions, on the other hand, are not directed to the community at large but to the public administration itself or to those whose duty it is “to take care that the laws are executed,” as an instrument of directing their execution of the law (*CIC* c. 34 §1).⁶⁵ General executory decrees and instructions may be issued by any of the active organs of public administration, that is, “those

64. On these categories, see, e.g., Eduardo Baura, “Il valore normativo dell’Istruzione *Dignitas connubii*,” in *Il giudizio di nullità matrimoniale dopo l’Istruzione “Dignitas connubii”*, ed. Piero Antonio Bonnet and Carlo Gullo, *Studia Giuridici* 75 (Vatican City: Libreria Editrice Vaticana, 2007) 1: 185–211; idem, “L’attività normativa dell’amministrazione ecclesiastica,” *Folia Canonica* 5 (2002) 59–84; Andrea Bettetini, “‘Statuti’ e ‘regolamenti’ nel Codice di diritto canonico,” *Il diritto ecclesiastico* 105 (1994–I) 3–14; María José Cíaurrez Labiano, “Las disposiciones generales de la administración eclesiástica,” in *Le Nouveau Code de Droit Canonique. V^e Congrès International de Droit Canonique*, Ottawa, 1984. *The New Code of Canon Law. 5th International Congress of Canon Law*, Ottawa, 1984, ed. Michel Thériault and Jean Thorn (Ottawa: Saint Paul University, 1986) 1: 213–230; John M. Huels, “A Theory of Juridical Documents Based on Canons 29–34,” *Studia Canonica* 32 (1998) 337–370; Eduardo Labandeira, *Trattato di diritto amministrativo canonico* (Milan: Giuffrè Editore, 1994) 238–257; Jorge Miras, Javier Canosa, and Eduardo Baura, *Compendio di diritto amministrativo canonico*, *Subsidia Canonica* 4, 2nd ed. (Rome: Pontificia Università della Santa Croce, 2009) 89–120; Tomás Rincón-Pérez, “Actos normativos de carácter administrativo,” in *La norma en el derecho canónico. Actas del III Congreso internacional de derecho canónico (Pamplona, 10–15 octubre de 1976)* (Pamplona: EUNSA, 1979) 1: 959–976.

Independent norms are those non-legislative binding rules that do not execute legislative norms but enjoy autonomy from them. They are issued by the public administration for providing order to a juridical person or some group of the faithful. They may also be issued by the legislator (*CIC* c. 94 §3) or even by the faithful (cf. *CIC* c. 299); but in these cases they have the character of laws and private norms, respectively, not administrative norms. Falling into this category are the statutes and rules of order (*ordines*) of canons 94–95 of the 1983 Code. Statutes define a juridical person’s purpose, composition, direction, procedures and activities (cf. *CIC* c. 117; *CCEO* c. 922), while rules of order apply to gatherings of the faithful, such as a diocesan synod or a particular council.

65. Cf. Javier Otaduy, “El sentido de la ley canónica a la luz del Libro I del nuevo Código,” in *La nueva codificación canónica. I. Temas fundamentales en el nuevo Código*, XVIII Semana española de derecho canónico (Salamanca: Universidad Pontificia de Salamanca, 1984) 72.

who enjoy executive power, within the limits of their competence" (*CIC* cc. 31 §1, 34 §1), obviously not excluding the Supreme Pontiff. In discerning the nature of a norm, it is necessary to look beyond the title of the document in which it is stated, into its internal character and substance. For, as even the legislator acknowledges, norms of a given nature may be found in documents bearing diverse titles (cf. *CIC* c. 33 §1).

What is immediately notable about the *Ratio procedendi* is its deliberate placement outside of the *motu proprio* proper. This exhibits an intentional distinction of it from the revised canons of the Latin and Eastern Codes. In other words, they are not the revised legislation, and this is immediately evident from their location. They could have been incorporated among the revised canons, considering especially the fact that they are divided in the same way, bearing the same titles or subsection names.

The function of the *Ratio* as stated by the legislator and as practically observed in the tone of its provisions suggests that it is not legislation but a body of administrative norms. For in the first place, the legislator identifies its purpose as aiding in "the correct and accurate necessary *application*" of the revised canons, as is substantially reiterated in art. 6 of the *Ratio*. This corresponds with the fundamental character of administrative norms, as just discussed. In addition, the tone of the norms is directive and applicative vis-à-vis the new canons, not firm, original constitutional rules. For example, artt. 1–5 and 7 §1 give direction for concretizing the principle of proximity; art. 14 gives a non-exhaustive ("*etc.*"), non-binding ("*sinunt*") list of examples of factual situations that could justify use of the abbreviated process (§1) and what kinds of proof may support a petition for such a process (§2). Another clue resides in how the *Ratio* makes frequent cross-reference back to the revised canons and other canons of the general legislation it means to apply (see artt. 7, 8 §2, 11 §1, 14 §1, 15, 17, 19, 21).

Thus, it can be maintained that the prescriptions of the *Ratio* have the character of supreme administrative norms. The import of this is that they may lack the stability of legislation, while the revised canons are presumed to have the marks of stability and therefore perpetuity. Also, administrative norms would not be presumed to have revocatory force in relation to any canons of the code, were that question to arise. What kind of administrative norms they are is of less importance, but this is discerned by attending to their audience. As in the case of *Dignitas connubii*,

which is called an instruction while, in the opinion of noted doctrine, in fact being a body of general executory decrees,⁶⁶ it is likewise a body of general executory decrees since it is not only directed to those entrusted with executing procedural law in causes of nullity of marriage. It also governs the whole process and the rights of all the faithful acting within it. Its audience is the same as that of Book VII of the 1983 Code itself and Title XXVI of the Eastern Code: all the faithful and all non-Catholics who may be subject to the Church's judiciary.

2. The Status of the Instruction *Dignitas connubii*

The instruction *Dignitas connubii* was approved by Pope John Paul II on November 8, 2004 and was issued by the Pontifical Council for Legislative Texts on January 25, 2005. It is a body of general administrative norms guiding the correct application of the canons of the Latin Code (art. 1 §1) regulating the conduct of the marriage nullity process. As was observed above, nowhere in the *motu proprio* for the Latin Church is the instruction *Dignitas connubii* mentioned. Therefore, it is clearly not explicitly revoked (see cc. 33 §2, 34 §3). The general revocatory formula in it only brings to cessation those prior norms that are contrary to the reformed canons ("*contrariis quibusvis, etiam specialissima mentione dignis, non obstantibus*"); this does not amount to an implicit revocation of *Dignitas connubii*, which regulates the same matter as the *motu proprio*, though in greater detail. The specific revocatory formula used in the document is the following: "Having thoroughly considered all of these things, we decree and establish that Chapter I of Title I of Part III of Book VII of the Code of Canon Law, on causes for declaring the nullity of marriage (cc. 1671–1691), is from December 8, 2015 integrally substituted as follows: [thus follow the revised canons]."⁶⁷ In other words, what were revoked were canons 1671–1691 of the Latin Code.

66. Cf. Javier Otaduy, "El principio de jerarquía normativa y la Instrucción *Dignitas connubii*," in *Procesos de nulidad matrimonial*, 45–80. Similarly, with regard to the "Instruction" *Redemptionis Sacramentum* on certain practices to be observed and avoided concerning the Most Holy Eucharist, see John M. Huels, "New Eucharistic Discipline in the Instruction *Redemptionis Sacramentum* and the Need for a Reform of Canons 29–34," *Studies in Church Law* 2 (2006) 33–59.

67. "Quibus omnibus mature consideratis, decernimus ac statuimus Libri VII Codicis Iuris Canonici, Partis III, Tituli I, Caput I De causis ad matrimonii nullitatem declarandam

Now, the norms of the instruction *Dignitas connubii* are meant to give application to all the laws that govern trials concerning nullity of marriage. They would cease to be binding to the extent that the laws binding such trials are revoked (cf. c. 33 §1: “*cessante lege ad cuius executionem data sunt*”). However, one can observe in the new canons 1671–1691 many norms that are substantially and often textually the same as those in the revoked canons—in particular, old canons 1671–1672, 1674–1675, 1678, 1680–1681, 1684 §1, 1685–1691. Thus, the norm of the revoked canon remains in effect, leaving the applicative administrative norm intact. Moreover, the new canon 1691 §3, like the reordered canon 1691, establishes that norms other than the canons issued in this Chapter are to be observed in the manner of proceeding in causes of nullity of marriage, namely, the canons concerning trials in general (Book VII, Part I) and concerning the ordinary contentious trial (Book VII, Part II). Drawing on judicial praxis, apostolic jurisprudence, authentic interpretations of law, and the teaching of the ordinary pontifical magisterium,⁶⁸ the norms of the instruction *Dignitas connubii* explain the manner in which many of these just-mentioned canons are to be applied in causes of nullity of marriage, and thus they remain in force.

Here it is worthwhile to identify those articles of the instruction *Dignitas connubii* that have been implicitly revoked due to the cessation of the law for whose execution they were issued.

- *The new canon 1672* integrally reorders the matter of old canon 1673, and thus the norms of *DC* on the application of the latter are also revoked, namely, artt. 10 §1 and 13.
- *The new canon 1673* applies several canons of Part I of Book VII to causes of nullity of marriage. Since the revocatory formula of the *motu proprio* was limited to the replacement of the old canons 1671–1691 with the new canons 1671–1691, it happens that canons of the Latin Code are not revoked but only their application to causes of nullity of marriage change. In other words, norms of *Dignitas*

(cann. 1671–1691), inde a die VIII mensis Decembris anni MMXV, integre substitui prout sequitur:”

68. Cf. Joaquín Llobell, “The Juridical Nature of the Instruction *Dignitas connubii* and Reaction to It in the Church,” in *Studies on the Instruction “Dignitas connubii.” Proceedings of the Study Day Held at the Pontifical University of the Holy Cross, Rome, January 19, 2006*, ed. Patricia Dugan and Luis Navarro, Gratianus Series (Montréal: Wilson & Lafleur, 2006) 3–15.

connubii are revoked but not the canons of the code that they apply. Accordingly:

- ◊ §3 of the new canon 1673 revokes DC art. 43 §2, such that *for causes of nullity of marriage*, the use of lay judges does not require the permission of the conference of bishops, nor does the use of one require a situation of necessity. For the universal law now authorizes the judicial vicar to appoint two lay judges when constituting a college of judges. However, in all other kinds of causes (e.g., the separation of spouses, causes of rights, penal causes), in accord with the un-revoked canon 1421 §2, a lay judge may only be included in the college of judges if the conference of bishops has permitted this and there is a need to appoint one owing to the absence of clerical judges.
 - ◊ Likewise, §4 of the new canon revokes DC art. 30 §3 but not canon 1425 §4. Thus, the permission of the conference of bishops, now granted by the supreme legislator, is not needed for entrusting causes to a single clerical judge, while it is still needed for other kinds of causes. Accordingly, were another kind of cause reserved to a college of three judges (c. 1425 §1) to be decided by a single clerical judge, lacking the permission of the conference, the definitive sentence would be remedially null due to an illegitimate number of judges (c. 1622, 1°).
 - ◊ In the same vein, the appellate college of judges in causes of nullity of marriage may be composed of a cleric and two lay judges in virtue of §5 of the new canon; but in other kinds of causes only one lay judge may be appointed (when permitted by the conference of bishops) and only then when a cleric is not available.
- Also, *the new canon 1673 §§2 and 4* revokes DC art. 24 §1 and 69 §2, such that the diocesan bishop need not approach the Apostolic Signatura for an extension of competence in order to entrust causes within his competence to a neighboring (*vicinius*) tribunal.
 - *The new canon 1675* revokes canon 1676 and the rather pastorally rich DC art. 65, both of which were in place to have the judge share in the Church's defense of the stability of marriage and the family and the effort to help avoid litigation in the Church. No longer is

he bound to strive for the spouses' reconciliation; he may simply verify the irreparable rupture of their relationship.

- *The new canon 1676* revokes canon 1677 as well as a number of norms or parts of norms of *DC*, namely, those prescribing: a) the immediate constitution of a tribunal by the judicial vicar and notification of the names of the judges to the spouses (art. 118),⁶⁹ b) the direction of the introductory phase of the process by the presiding judge or, as the case may be, the *ponens*,⁷⁰ c) the advisable hearing of the defender of the bond prior to the admission of the *libellus* (art. 119 §2), and d) the limitation of the formulation of the doubt to the alleged grounds of nullity, since now the manner of proceeding is also to be decreed (cf. art. 135 §1).
- *The new canon 1678 §§1–2* revokes old canon 1679 and *DC* artt. 180 and 202.
- *The new canons 1679–1680* revoke old canons 1682–1683 and *DC* artt. 264–265 and the related elements of artt. 290 and 301 §1.
- *The new canons 1683–1687* are entirely new and revoke no canons of the Code but only *DC* art. 22 §2, which encouraged the bishop, on the contrary, to avoid adjudicating causes of nullity of marriage himself.

Therefore, bearing in mind the nuances just stated, the articles of the instruction *Dignitas connubii* that have been revoked are the following: artt. 10 §1, 13, 22 §2, 24 §1, 30 §3, 43 §2, 46 §2, 7^o–10^o, 47 §2, 65, 69 §2, 118, 119, 126 §1, 127, 135 §1, 140, 1^o–2^o, 180, 202, 264–265 and some aspects of artt. 290 and 301 §1. All the others retain their force and must be observed outside of the legitimate use of the abbreviated process before the diocesan bishop.

Dignitas connubii was intended to be a normative source that could simplify the carrying out of a trial for ministers of justice, but it has now become a somewhat complicated document, given the fact of all these derogations. It would be most appropriate, therefore, for the competent dicastery of the Roman Curia to issue a revised, complete, carefully drafted body of administrative norms to be observed for treating causes

69. Nevertheless, the name of the defender of the bond, whose pre-citation appointment in the case is presupposed by the new c. 1676 §1, is to be transmitted to the spouses at the time of the citation (see *DC* art. 127 §4).

70. Cf. *DC* artt. 46 §2, 7^o–10^o, 47 §2, 119, 126 §1, 127, 135 §1, 140^o–2^o.

of nullity of marriage. Notwithstanding the urgency of this serious matter, such a document may best be issued after a period within which the Church can obtain some experience of these procedural novelties, perhaps giving rise to additional prudent provisions.

IV. Conclusion

Issuing legislation is a governmental activity that is subject to the prudent judgment of the competent legislator; and as human law, it is perfectible and thus, from a scientific perspective, subject to respectful critique by those qualified (cf. c. 218). The value of canonical legislation in particular is especially assessed with reference to the consistent magisterium of the Church pertaining to the object of the legislation, and this is the vantage point out of which the canonist must operate in matters that are not of a merely technico-juridical nature.

The reform of legislation, which by its nature bears the mark of perpetuity and stability, is a serious matter. Before it is opportunely initiated, there is first the question of whether there is a real need for *legislative* reform. For the practical problems that exist in a society and in the activity of those entrusted with power in it may often amount to a problem of *application*, whether this be administrative or judicial application. While the present reform has been effectively accomplished in virtue of Pope Francis' supreme legislative authority in the Church as Vicar of Christ on earth, one may respectfully question its suitability. This, of course, like most things, will be subject to the judgment of history.

One assessment that can be made at the present moment is that what was and is in need of reform is not procedural law but its concrete application by ministers of justice throughout the world. Each nation, each tribunal, has its own challenges in the correct application of procedural and matrimonial law, and it is doubtful that the just completed alteration of the general legislation—the fruit of the Church's time-tested experience—offers a real solution. It may have been more effective for Pope Francis to provide instruments for the more expeditious and effective vigilance over the correct administration of justice. The Supreme Tribunal of the Apostolic Signatura has steadily and carefully carried out this function in the Church for decades, but its small staff and limited resources have naturally

affected its ability to transform the daily operations and jurisprudence of local tribunals. It knows what happens in tribunals, though; it knows, for example, that some tribunals have allowed the construction of obstacles for parties even to initiate a trial, that others lack the personnel or expertise to complete a trial in a just period of time, and that still others, while very efficient, frequently operate out of a divorce-oriented mentality. Canonical legislation and the ecclesial magisterium address all of these matters, but the practical solutions reside not in sources of such a general character but in the concrete and effective intervention of those who have the responsibility to provide suitably prepared ministers of justice and to exercise vigilance over their judicial activity.

This study has aimed to demonstrate that the reform of the canons governing causes of nullity of marriage in the Church has given expression to certain principles articulated more than once already by Pope Francis in the first two and a half years of his pontificate. Standing out among the concrete norms of the reform are the principle of the celerity of the marriage nullity process and the principle of proximity between the judge and the parties. The same norms, however, in notable contrast with previous legislation in the matter, seem to minimize the principle of the protection of the indissolubility of marriage, which has been stressed frequently and eloquently in the pre-Francis pontifical magisterium. This could pose a risk to the Church's actual protection of marriage. And it demands that ministers of justice both acknowledge that the reform places the *favor celeritatis* in a place of precedence over the *favor matrimonii*, and to resolve firmly ever to administer justice in a manner that clearly radiates the *favor veritatis*. For it is above all the truth declared with charity that redounds to the salvation of souls, which is always the supreme law of the Church.

ABSTRACT

Pope Francis' 2015 reform of the marriage nullity process is of monumental significance for the canonical system. For it not only alters some matrimonial procedural norms that have been in place for centuries, but it also touches on a matter that is of foundational importance to every human society, including and especially the Church—namely, the stability of marriage and the family. The reform, which was carried out rather quickly and

with relatively minimal consultation, was based especially on the principle of the greater celerity of the process, as well as the principle of proximity between the judge and the parties and the principle of the protection of the indissolubility of marriage. However, the new norms arguably reveal, in tension with canonical tradition and the consistent teaching of the magisterium, a preference for the celerity of the process over the protection of the indissolubility of marriage. They also introduce some ambiguities about the instruction Dignitas connubii, published just 10 years ago. This reform, while effective and undoubtedly binding, gives rise to new questions in the canonical science's ongoing reflection about the best instruments for examining the alleged nullity of marriage.
